

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA

Application of Zephyr Communications, L.L.C.
for a Certificate of Public Convenience and
Necessity to Provide Limited Facilities-Based and
Resold Competitive Local Exchange Services,
Resold IntraLATA and InterLATA Telephone
Services, and High Speed Data Services.

Application 03-02-001
(Filed February 3, 2003)

O P I N I O N

I. Summary

Zephyr Communications, L.L.C. (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide local exchange, resold intraLATA and interLATA telephone service, and high speed data services. This decision grants the requested authority subject to the terms and conditions set forth below.

II. Background

In prior decisions, we authorized the provision of competitive local exchange service, by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon), Roseville Telephone Company (RTC), and Citizens Telecommunications Company of California, Inc. (CTC).

Applicant, a California corporation, seeks authority to provide telecommunications services as a competitive local carrier (CLC) throughout

Pacific's and Verizon's service territories. At the time it filed its application, applicant was a limited liability company organized under the laws of California.

Applicant's principal place of business is located at 344 Salem Street, Chico, California 95928.

III. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide facilities-based and resold local exchange services must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent to meet the firm's start-up expenses.¹ An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service.²

Applicant provided bank statements that demonstrate that it has sufficient cash to satisfy the financial requirement.

By a motion filed February 3, 2003, Applicant requests that the financial information filed with the application be kept under seal. The financial information consists of unaudited financial statements and bank statements. Applicant represents that the information is proprietary and sensitive. The information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

¹ The financial requirement for CLCs is contained in Decision (D.) 95-12-056, Appendix C.

² The requirement for CLC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C.

IV. Technical Qualifications

Applicants for CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant demonstrated that its managers possess sufficient experience and knowledge to operate the company as a telecommunications provider.

Applicant represents that no one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was previously associated with any telecommunications carrier that filed for bankruptcy or went out of business, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

V. Tariffs

Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. Applicant shall correct these deficiencies in its tariff compliance filing as a condition of our approval of its tariffs.

VI. California Environmental Quality Act (CEQA)

CEQA applies to discretionary projects to be carried out or approved by public agencies. Because the Commission must act on Applicant's request for a CPCN and issue a discretionary decision before the project can proceed, the Commission must act as either a lead or responsible Agency under CEQA. The lead agency is the public agency with the greatest responsibility for supervising or approving the project as a whole. (CEQA Guidelines Section 15151(b).) The Commission as the designated lead agency must consider what review is necessary under CEQA, and if appropriate, investigate alternatives, avoid

adverse impacts and restore or enhance environmental quality to the fullest extent possible.

Applicant's initial Proponent's Environmental Statement (PEA) represented that it would use existing conduit, previously constructed by others, for its fiber optic cable, except that Applicant would construct limited facilities in the City of Chico that involve the laying of additional conduit from an existing AT&T tower and Applicant's Network Operations Center (NOC) as follows: (1) a single 4-inch conduit would be extended from the SBC manhole located on the s/w corner of the intersection of Nord Avenue and West 8th Avenue (a commercial area in downtown Chico), approximately 770 feet where the conduit would cross West 8th Avenue to the AT&T tower; and (2) a single 4-inch conduit would be extended approximately 80 feet across 3rd Street to the NOC from the SBC manhole located in the sidewalk midway on 3d Street between Salem Street and Normal Street, a mixed commercial/residential area. This construction would take place within public right-of-way and on the private property on which the tower and NOC are located.

On September 29, 2003 Appellant filed an amended Proponent's Environmental Assessment stating that the proposed project would use a different tower site and would consequently require the installation of 350 feet rather than 850 feet of new conduit. Applicant's revised project would use the California Water Company Tower instead of the AT&T tower. A single 1-3 inch conduit would be extended from SBC manhole #141 located at the intersection of Esplanade and 6th Avenue and would run approximately 300 feet east from that intersection under W. 6th Avenue to the California Water Company Tower. A single 1-3 inch conduit would be extended approximately 50 feet down an alley adjoining 6th Avenue to the tower site. The new conduit would be placed by

directional bore in accordance with an encroachment permit that must be issued by the City of Chico. The construction would take place within the public right-of-way and on the private property where the tower is located.

On October 29, 2003, Applicant filed a Second Supplement to Environmental Assessment of Zephyr Communications, LLC, confirming that its proposed limited construction met the criteria for an exemption “under CEQA Guideline 15332 because

- ‘(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.’” (Second Supplement to Environmental Assessment of Zephyr Communications, LLC, citing CEQA Guideline 15332.)

The project, including the additional conduit that must be installed falls within the exemption s in CEQA Guideline 15332. Accordingly we find that it is exempt from further CEQA review. Any additional construction or changes to the project would require our review.

VII. Categorization and Need for Hearings

In Resolution ALJ 176-3107, dated February 13, 2003, the Commission categorized this application as ratesetting, and determined that hearings were not necessary. The Commission received no protests. There is no apparent

reason why the application should not be granted. Given these developments, a public hearing is not necessary.

VIII. Comments on Draft Decision

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

IX. Conclusion

We conclude that the application conforms to our rules for authority to provide competitive local exchange and interexchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

X. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Karl J. Bemederfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. No protests have been filed.
2. A hearing is not required.
3. In prior decisions the Commission authorized competition, by carriers meeting specified criteria, in providing local exchange telecommunications services within the service territories of Pacific, Verizon, RTC, and CTC.
4. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
5. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.
6. Applicant possesses sufficient experience and knowledge to provide telecommunications services.

7. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies identified in Attachment A to this decision. Except for those deficiencies, its draft tariffs complied with the Commission's requirements.

8. Applicant will not be constructing facilities, other than equipment to be installed in existing buildings or structures and approximately 350 linear feet of 1-3-inch conduit to be installed in existing right-of-way and on private property, from the SBC manhole #141 located at the intersection of Esplanade and 6th Avenue running 300 feet east from that intersection under W. 6th Avenue to the California Water Company Tower. A single 1-3 inch conduit would be extended approximately 50 feet down an alley adjoining 6th Avenue to the tower site.

9. Applicant submitted its "Second Supplement to Environmental Assessment of Zephyr Communications, LLC" on October 29, 2003, representing that the project met the requirements for an exemption under CEQA Guideline 15332.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has sufficient technical expertise to operate as a telecommunications carrier.
3. Public convenience and necessity require that Applicant's competitive local exchange and interexchange services be subject to the terms and conditions set forth herein.
4. The limited construction of 350 feet conduit, as described above, near an existing tower in the City of Chico is exempt from CEQA review pursuant to CEQA Guideline 15332.
5. The application should be granted to the extent set forth below.

6. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

7. Applicant's initial tariff filing should correct the deficiencies in its draft tariffs as indicated in Attachment A to this decision.

8. Because of the public interest in competitive local exchange and interexchange services, the following order should be effective immediately.

9. Applicant's request to have the financial information filed with the application, kept under seal should be granted for two years.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to Zephyr Communications LLC. (Applicant) to operate as a provider of competitive local exchange services, resold intraLATA and InterLATA telephone services, and high speed data services, subject to the terms and conditions set forth below.

2. Applicant is authorized to provide local exchange service in the service territories of Pacific Bell Telephone Company and Verizon California Inc. and resold inter-and-intra-LATA telephone service and high-speed data service throughout the State of California.

3. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services with the deficiencies noted in Attachment A corrected. Applicant may not offer services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI. The tariff shall be effective not less than 1 day

after tariff approval by the Commission's Telecommunications Division.

Applicant shall comply with its tariffs.

4. The certificate granted, and the authority to render service under the rates, charges, and rules authorized, will expire if not exercised within 12 months after the effective date of this order.

5. The corporate identification number assigned to Applicant, U-6806-C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

6. Applicant shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/Investigation 95-04-044) as well as all other applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

7. Applicant shall comply with the requirements applicable to competitive local exchange carriers included in Attachment B to this decision.

8. Applicant is not authorized to construct facilities, other than equipment to be installed in existing buildings or structures and the 1-3 inch conduit connecting its facilities in the City of Chico to an existing tower, as described in Finding of Fact no. 8. Any additional construction will require our prior approval.

9. Applicant's request to have the financial information filed with the application kept under seal should be granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

10. If Applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further

withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

11. This application is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

List of deficiencies in tariffs filed by Zephyr Communications, LLC in A.03-02-001 to be corrected in its tariff compliance filing.

The following deficiencies are found in Schedule No.4-T of the CLC tariff.

1. Sheet 7: Include the actual service area map in the CLC tariff.
2. Sheet 17, Rule 8: Include Rule 8F and 8G from Appendix B of D.95-07-054 in the CLC tariff.
3. Sheet 31, Rule 27: Include the fees and surcharges shown in Attachment B to this decision.
4. Sheet 65: Include the following Income Limitation, rates and charges for ULTS:

<u>Household Size</u>	<u>Income Limitation</u>
1-2	\$19,600
3	23,200
4	27,800
Each additional member	4,600
Flat Rate	\$ 5.34
Measured Rate	\$ 2.85
Installation	\$ 10.00
5. Include sample forms in the CLC tariff.

Include rules on how telephone directories will be provided to residential and business customers.

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND NON-DOMINANT INTEREXCHANGE CARRIERS

1. Applicant shall file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fee and surcharges that must be regularly remitted per the instructions in Appendix E to D.00-10-028. The Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is zero. The surcharge changes to 1.20% effective September 1, 2003 (Resolution T-16689, April 17, 2003);

- a. The current 0.0% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-16688, December 5, 2002); The surcharge changes to 1.20% effective September 1, 2003 (Resolution T-16689, April 17, 2003);
- b. The current 0.047% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16747, June 5, 2003);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue (Resolution M-4807);
- d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16702 at 0.21%, April 17, 2003);

- e. The current 2.70% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., Resolution T-16690, April 17, 2003); and
- f. The current 0.0% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-16686, December 5, 2002).

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix C, Section 4E of Decision (D.) 95-12-056:

“E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

“(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days’ notice. Customer notification is not required for rate decreases.

“(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days’ notice to the Commission, and shall require bill inserts, or first class mail notice to customers at least 30 days in advance of the pending rate increase.

“(3) Uniform minor rate increases, as defined in D.90-11-029, shall become effective on not less than (5) working days’ notice to the Commission. Customer notification is not required for such minor rate increases.

“(4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.

“(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days’ notice to the Commission.

“(6) Contracts shall be subject to GO 96-A rules for NDIECS, except interconnection contracts.

“(7) CLCs shall file tariffs in accordance with PU Code § 876.”

4. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

“Paragraph 5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

- “a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day’s notice.
- “b. Uniform rate reductions for existing services shall become effective on five (5) days’ notice.
- “c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days’ notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.
- “d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than five (5) working days’ notice. Customer notification is not required for such minor rate increases.
- “e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.
- “f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days’ notice.”

5. Applicant may deviate from the following provisions of GO 96-A:

(a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and

prohibits the reuse of sheet numbers; and (b) paragraph II.C.(4), which requires that “a separate sheet or series of sheets should be used for each rule.” Tariff filings incorporating these deviations shall be subject to the approval of the Commission’s Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

6. Applicant shall file a service area map as part of its initial tariff.

7. Prior to initiating service, Applicant shall provide the Commission’s Consumer Services Division with the name and phone number of its designated contact person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.

8. Applicant shall notify this Commission in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

9. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within five days after service begins, and again within five days after intraLATA service begins.³

10. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

11. In the event Applicant’s books and records are required for inspection by the Commission or its staff, it shall either produce such records at the

³ California is divided into ten Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. InterLATA describes services, revenues and functions relating to telecommunications originating within one LATA and terminating in another LATA. IntraLATA describes services, revenues and functions relating to telecommunications originating within a single LATA.

Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

12. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

13. Applicant shall file an affiliate transaction report with the Director of the Telecommunications Division, in compliance with Decision (D.) 93-02-019, on a calendar year basis using the form developed by Commission Staff and contained in Attachment D.

14. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.

15. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

16. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Commission's Telecommunications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Telecommunications Division to file or remit late.

17. Applicant is exempt from General Order 96-A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).

18. Applicant is exempt from Pub. Util. Code §§ 816-830.

19. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

20. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

(END OF ATTACHMENT B)

**ATTACHMENT C
ANNUAL REPORT**

An original and two copies shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

Required information:

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted

concerning the reported information.

4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.

5. Type of organization (*e.g.*, corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
- b. State in which incorporated.

6. The number and date of the Commission decision granting the Utility's CPCN.

7. Date operations were begun.

8. Description of other business activities in which the utility is engaged.

9. A list of all affiliated companies and their relationship to the utility. State if affiliate is:

- a. Regulated public utility.
- b. Publicly held corporation.

10. Balance sheet as of December 31st of the year for which information is submitted.

11. Income statement for California operations for the calendar year for which information is submitted.

For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

ATTACHMENT D**CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

1. Each utility shall list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual Affiliate Transaction report.

- Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership);
- Voting rights held by the utility and percent;
- Corporate officers.

2. The utility shall prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart should have the controlling corporation (if any) at the top of the chart; the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart and all secondary subsidiaries and affiliates (*e.g.* a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary should be clearly noted.

3. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

4. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility's annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

5. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF ATTACHMENT D)